

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1995, each agency shall begin the rulemaking process by 1st filing a Notice of Proposed Rulemaking, containing the preamble and the full text of the rules, with the Secretary of State's Office. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the Arizona Administrative Register.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the Register before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES FOOD, RECREATIONAL AND INSTITUTIONAL SANITATION

PREAMBLE

1. **Sections Affected**

<u>Sections Affected</u>	<u>Rulemaking Action</u>
Article 14	Repeal
R9-8-1411	Repeal
R9-8-1412	Repeal
R9-8-1413	Repeal
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statutes: A.R.S. §§ 36-136(A)(7) and 36-136(F)

Implementing statute: A.R.S. § 36-104(1)(b)(I)
3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Richard Cox, Rules Specialist
Address:	Department of Health Services Food Safety and Environmental Services 3815 North Black Canyon Highway Phoenix, Arizona 85015
Telephone:	(602) 230-5908
Fax:	(602) 230-5817
4. **An explanation of the rule, including the agency's reasons for initiating the rules:**

The rules being repealed in 9 A.A.C. 8, Article 14, entitled Objectionable Facilities and Animals, contain provisions for the keeping of animals in residential areas, handling of animal manure, protection of groundwater aquifers, and prevention of Trichinosis transmission through pork. The current rules, adopted in 1976, have undergone no revision since that time and are obsolete. Local jurisdictions have adopted various ordinances that deal with the keeping of animals, especially pet pigs, that conflict with the state rules. The statutory authority for the protection of groundwater aquifers was transferred to the Department of Environmental Quality in 1987. The statutory authority for meat inspection at the wholesale level is mandated to the Department of Agriculture. In addition, A.R.S. § 36-601(A)(1) declares any place or condition in a residential area that allows pests to breed a public nuisance, thus making the rules pertaining to fly breeding unnecessary.
5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.
6. **An explanation of the rule, including the agency's reasons for initiating the rule:**

No economic impact to small businesses, political subdivisions, or the public is projected by the repeal of the subject rules.

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7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Richard Cox
Address: Department of Health Services
Food and Safety and Environmental Services
3815 North Black Canyon Highway
Phoenix, Arizona 85015
Telephone: (602) 230-5908
Fax: (602) 230-5817

8 The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

No oral proceeding is scheduled. A person may submit written comments or a request for an oral proceeding on the proposed rules no later than 5 p.m., December 20, 1996, to the person listed above.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.

10. Incorporations by reference and their location in the rules:
None.

11. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 8. DEPARTMENT OF HEALTH SERVICES
FOOD, RECREATIONAL AND INSTITUTIONAL SANITATION**

**ARTICLE 14. OBJECTIONABLE FACILITIES AND
ANIMALS**

- R9-8-1411. Keeping of animals; general
R9-8-1412. Piggeries
R9-8-1413. Establishments handling objectionable organic matter

**ARTICLE 14. OBJECTIONABLE FACILITIES AND
ANIMALS**

R9-8-1411. Keeping of animals; general

- A. Any person, firm, or corporation is prohibited from keeping or sheltering animals in such a manner that a condition resulting from same shall constitute a nuisance.
B. In populous districts, stable manure must be kept in a covered watertight pit or chamber and shall be removed at least twice a week. Manure on farms or isolated premises other than dairy farms need not be so protected and removed unless ordered by the state or local health department.
C. Manure shall not be allowed to accumulate in any place where it can prejudicially affect any source of drinking water.

R9-8-1412. Piggeries

- A. No pigsty or piggery shall be built or maintained on marshy ground or land subject to overflow, nor within 200 feet of any stream, canal, or other source of water supply, nor within 300 feet of an inhabited house or public meeting house on an adjoining property.
B. When garbage is fed to all pigs, all unconsumed garbage shall be removed daily and disposed of by burial or incineration.
C. No organic material furnishing food for flies shall be allowed to accumulate on the premises.
D. All garbage shall be handled and fed upon platforms of concrete or other impervious material.
E. Unslaked lime, hypochlorite or lime, borax, or mineral oil shall be used daily in sufficient quantities to prevent offensive odors and the breeding of flies.

R9-8-1413. Establishments handling objectionable organic matter

All slaughter houses, rendering works, bone boiling establishments, depositories for dead animals, garbage disposal works, piggeries, and similar establishments handling organic matter shall have an adequate water supply for the purpose of keeping the place clean and sanitary.

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TITLE 9. HEALTH SERVICES

CHAPTER 26. COUNCIL FOR THE HEARING IMPAIRED

PREAMBLE

- 1. Sections Affected**

<u>Sections Affected</u>	<u>Rulemaking Action</u>
Article 5	New Article
R9-26-501	New Section
R9-26-502	New Section
R9-26-503	New Section
R9-26-504	New Section
R9-26-505	New Section
R9-26-506	New Section
R9-26-507	New Section
R9-26-508	New Section
R9-26-509	New Section
R9-26-510	New Section
R9-26-511	New Section
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 36-1946(A)
Implementing statutes: A.R.S. §§ 36-1946(A) and 12-242
- 3. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Stuart Brackney, Executive Director
Address: Council for the Hearing Impaired
1400 West Washington, Room 126
Phoenix, Arizona 85007
Telephone: (602) 542-3323
Fax: (602) 542-3380
- 4. An explanation of the rule, including the agency's reasons for initiating the rule:**

The proposed rules classify interpreters for deaf persons based on the level of interpreting skills acquired by that person. The proposed rules also establish standards and procedures for the qualification and certification of each classification of interpreters. The rules are necessary to comply with A.R.S. §§ 12-242 and 32-1946, which require the Council to issue certificates of competency to interpreters who have met the Council's qualifications. These rules are necessary so that courts, governmental entities, and law enforcement personnel can determine who qualified interpreters are to provide services to a deaf party in a court, governmental, or law enforcement proceeding.
- 5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.
- 6. The preliminary summary of the economic, small business, and consumer impact:**

With the adoption of these proposed rules, the Council will have moderate costs for rule consultant fees and printing of information. No fees will be charged by the Council for obtaining certificates of competency. The estimated costs to the Secretary of State is minimal for staff time and publishing the rules. The estimated costs to small businesses will be minimal (i.e., less than \$500) to meet the qualifications to obtain a certificate of competency. The estimated costs to courts, governmental entities, and law enforcement personnel to contact the Council to determine who are qualified interpreters will be minimal. The benefit to small businesses will be moderate to substantial because of the potential increase in work available to qualified interpreters. There also will be a benefit to consumers who require interpreter services, as they will be provided interpreters who are qualified to provide the needed services. The costs of adopting these rules is far outweighed by the benefits of having qualified interpreters for deaf parties, and by the benefits to small businesses who provide qualified interpreter services.

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7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Christine Chaillie
Address: Council for the Hearing Impaired
1400 West Washington, Room 126
Phoenix, Arizona 85007
Telephone: 542-3323
Fax: 542-3380

8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no

Date: December 16, 1996
Time: 9 a.m.
Location: Council for the Hearing Impaired
1400 West Washington, Room 126
Phoenix, Arizona 85007
Nature: Oral proceeding (public comment hearing)

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class or rules:
Not applicable.

10. Incorporations by reference and their location in the rules:
None.

11. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 26. COUNCIL FOR THE HEARING IMPAIRED

ARTICLE 5. INTERPRETER CERTIFICATION

- R9-26-501. Definitions
- R9-26-502. Process for Obtaining Interpreters
- R9-26-503. Sign Language Interpreter Certification
- R9-26-504. Temporary Sign Language Interpreter Certification
- R9-26-505. Grandfathering Sign Language Interpreters
- R9-26-506. Oral Interpreter Certification
- R9-26-507. Realtime Translator Certification
- R9-26-508. Application Processing Procedures; Issuance; Denial
- R9-26-509. Certification Renewal
- R9-26-510. Certification Revocation
- R9-26-511. Rehearing or Review of Decisions

ARTICLE 5. INTERPRETER CERTIFICATION

R9-26-501. Definitions

The following definitions apply in this Article:

1. "Applicant" means an individual who submits a completed application, and documentation to the Council to obtain a certificate of competency.
2. "Application" means a form provided to applicants by the Council, requiring the following information:
 - a. A photograph, measuring not less than 1 inch by 1 inch, of the applicant that was taken within 5 years of the date of filing the application;
 - b. The applicant's full current name and any former names;
 - c. The applicant's current address and telephone number;
 - d. The applicant's social security number;
 - e. Whether the applicant previously has applied for a certificate of competency;
 - f. The applicant's notarized signature, attesting to the

truthfulness of the information provided by the applicant; and

g. The documentation required by this Article.

3. "ASL" means American Sign Language, the visual language used by deaf persons in the United States to communicate.
4. "CDI" means a certified deaf interpreter certificate, a certification issued by RID, evidencing that the certificate holder is deaf or hard-of-hearing, and performs at or above RID standards for deaf interpreters, but provides interpretation services with a hearing qualified interpreter.
5. "Certificate of competency" means a certificate issued by the Council indicating that the certificate holder has met the criteria set forth in this Article for the provision of interpretation services to deaf persons in court proceedings, government entity proceedings, and law enforcement encounters.
6. "Certification" means a currently valid card issued by RID, with the word "certified", and the categories in which the cardholder is certified, listed under the cardholder's name.
7. "Certified copy" means having a copy of the original document notarized as being a true and accurate copy of the original.
8. "CI" means certificate of interpretation, issued by RID, evidencing that the certificate holder performs at or above RID standards for sign language interpreters who interpret between ASL and English in both sign-to-voice and voice-to-sign.
9. "Continuing legal education" means seminars sponsored by a bar association, law firm, law department, or government entity, at which attendance is not limited to members of the association, firm, department, or entity, and that constitute an organized program of learning, dealing

- with matters directly related to the practice of law, and following an agenda defined by written materials or exercises distributed as part of the program.
10. "Council" means the Arizona Council for the Hearing Impaired.
 11. "Court" means a place where people are officially assembled for the administration of justice, including all proceedings before every Grand Jury, Municipal Court, Justice Court, Magistrate Court, Superior Court, Court of Appeals, and Supreme Court in Arizona.
 12. "CRR" means a certified realtime reporter certification issued by the NCRA, reflecting that the certificate holder has the training, experience, skills, and equipment to provide realtime on-screen translation, with at least 96% accuracy, for a deaf person in a proceeding. The realtime translator does not make the official verbatim record of a proceeding.
 13. "CSC" means a comprehensive skills certificate issued by RID, evidencing that the certificate holder performs at or above RID standards for sign language interpreters who interpret between ASL and English, and convert spoken English to an English-based sign system, in both sign-to-voice and voice-to-sign.
 14. "CT" means a certificate of transliteration issued by RID and evidencing that the certificate holder performs at or above RID standards for sign language interpreters who convert spoken or written English to an English-based sign system, in both sign-to-voice and voice-to-sign.
 15. "Custody" means that a person in a law enforcement encounter is not free to leave.
 16. "Deaf person" means a person who is impaired in processing linguistic information through hearing, including any person who has an average pure tone decibel loss greater than 20dB in the better ear, any person who requires communication assistance, or any person who is hard-of-hearing, regardless of whether they wear hearing aids.
 17. "English-based sign system" means using conceptually accurate ASL signs in English syntax.
 18. "Executive Secretary" means the executive officer of the Council who is responsible for implementing the Council's programs and activities, under A.R.S. § 36-1942.
 19. "Government entity" means any department, board, commission, agency, or licensing authority of Arizona, or a political subdivision of Arizona.
 20. "Intermediary interpreter" means a person holding a CDI certificate, an RSC certificate, or any person that a deaf person chooses to assist with interpretation services between the deaf person and a qualified interpreter.
 21. "Law enforcement encounter" means any situation where a deaf person is questioned, arrested, or taken into custody for any alleged violation of Arizona criminal law, by any law enforcement personnel.
 22. "NCRA" means the National Court Reporters Association.
 23. "OIC" means an oral interpretation certificate issued by RID, evidencing that the certificate holder performs at or above RID standards for oral interpreters.
 24. "Oral Interpreter" means a person who mouths a spoken message so that a deaf person can accurately speech read and understand the intent of the spoken message, and who accurately verbalizes the message and intent of the deaf person's speech and mouth movements.
 25. "Party" means a deaf person who is a parent of a juvenile, a witness, complainant, defendant, or attorney in a court proceeding; a deaf person who is a principal party of interest, or a witness in a government entity proceeding; or a deaf person who is a defendant, or a criminal suspect in a law enforcement encounter.
 26. "Proceeding" means any civil, criminal, or grand jury proceeding; any government entity proceeding; or any law enforcement encounter.
 27. "Qualified interpreter" means a person who has a certificate of competency issued by the Council, and who is a court reporter who provides realtime translation, a sign language interpreter, or an oral interpreter.
 28. "Realtime translation" means a court reporter's computer-aided method of accurately and simultaneously translating and displaying spoken words, including punctuation, in live proceedings, within 5 seconds of steno type input, for a deaf person to read.
 29. "RID" means Registry of Interpreters for the Deaf.
 30. "RSC" means a reverse skills certificate, which is the prior name of a CDI, and is synonymous with CDI.
 31. "SC:L" means specialist certificate: legal issued by RID, evidencing that the certificate holder performs at or above RID standards for interpreting in proceedings.
 32. "Sign language interpreter" means a person who has a CI and CT, CSC, CDI, RSC, or SC:L certification from RID.
 33. "Speech read" means determining what a person is saying by the person's mouth movements, body language, and the context of the conversation.
 34. "Supervision" means that the supervising qualified interpreter has direct, in person contact with the interpreter that he or she is supervising, and provides orientation information to the supervisee about providing interpreter services in proceedings, observes the supervisee providing interpretation services in proceedings, has the supervisee observe the supervisor providing interpretation services in proceedings, and provides feedback to the supervisee about the supervisee's performance.
- R9-26-502. Process for Obtaining Interpreters**
- A. The court, government entity, or law enforcement personnel responsible for obtaining a qualified interpreter in any proceeding where a deaf person is a party, shall follow the steps stated in subsection (B).
 - B. The court, government entity, or law enforcement personnel shall:
 1. Determine whether a party is a deaf person;
 2. Determine from the deaf person whether the deaf person needs sign language interpretation, oral interpretation, court reporter realtime translation, or a combination of interpretation services;
 3. Determine, for sign language interpretation services, whether the deaf person needs ASL or an English-based sign system;
 4. Arrange for a qualified interpreter to provide interpretation services; and
 5. Determine from the deaf person whether the qualified interpreter meets the deaf person's communication needs.
 - C. The deaf person may reject the qualified interpreter because the interpreter cannot meet the deaf person's communication needs. The court, government entity, or law enforcement personnel shall then provide either an intermediary interpreter to work with the qualified interpreter, or another qualified interpreter that can meet the deaf person's communication needs.
- R9-26-503. Sign Language Interpreter Certification**
- A. The Council shall issue a sign language interpreter certificate of competency to an applicant who files an application with the Council, and submits all of the following:

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1. A certified copy of the applicant's CI and CT, CSC, CDI, or SC:L RID certification.
 2. An affidavit signed by the applicant and notarized attesting that the applicant:
 - a. Is a CI and CT, CSC, or SC:L certificate holder and has at least 2,000 hours of sign language interpreting experience within the 5 years immediately preceding the date of filing the affidavit with the Council, or is a CDI or RSC certificate holder and has at least 50 hours of sign language interpreting experience within the 5 years immediately preceding the date of filing the affidavit with the Council;
 - b. Has never been disciplined, and is not currently the subject of any disciplinary action, in any jurisdiction or before RID relating to providing interpreting services or adhering to the RID Code of Ethics, set forth in subsection (C);
 - c. Has never been named, and is not currently named, as a defendant in any law suit alleging the applicant was negligent in providing the applicant's interpreter services or alleging that the applicant violated the RID Code of Ethics, set forth in R9-26-503(C);
 - d. Follows the RID Code of Ethics, set forth in R9-26-503(C), including the obligation to be absolutely neutral in all proceedings;
 - e. Shall ensure that the applicant's interpreting skills meet the deaf person's communication needs, and that failure to do so may be grounds for revocation of the applicant's certificate of competency;
 - f. Shall complete the continuing education requirements necessary to maintain current RID certification in the category or categories in which the Council issued the applicant's certificate of competency;
 - g. Shall complete at least 3 clock hours of continuing legal education every year in addition to RID continuing education requirements, shall maintain accurate records of compliance with this subsection, and shall produce the records upon the Council's request; and
 - h. Shall obtain RID SC:L certification by January 1, 2005.
 3. Documentation that the applicant has provided at least 20 hours of sign language interpretation services to a deaf person under the supervision of a qualified interpreter in proceedings.
- B.** After January 1, 2005, an RID SC:L certification shall be the only RID certification that shall satisfy subsection (A)(1).
- C.** Interpreters shall comply with the following RID Code of Ethics requirements:
1. Keep all interpreting assignment related information confidential;
 2. Render the message to accurately convey the content and spirit of the speaker, using language that the deaf person readily understands;
 3. Not counsel, advise, or interject personal opinions;
 4. Accept assignments using discretion with regard to their skills, the setting, and the deaf person involved;
 5. Request compensation for services in a professional and judicious manner;
 6. Maintain high professional standards in providing services, including maintaining absolute neutrality in all proceedings; and
 7. Further their knowledge and skills by participating in workshops, professional meetings, interacting with professional colleagues, and reading current literature.

R9-26-504. Temporary Sign Language Interpreter Certification

- A.** The Council shall issue a temporary sign language interpreter certificate of competency to an applicant, who holds a CI and CT, CSC, or CDI RID certification, to provide interpretation services in proceedings under the supervision of a qualified interpreter for 1 year. This applicant shall file an application with the Council, and submit the following:
1. A certified copy of the applicant's CI and CT, CSC, or CDI RID certification; and
 2. The names and addresses of the applicant's qualified interpreter supervisors.
- B.** The temporary certificate of competency shall automatically expire 1 year after the date of issue. The temporary certificate holder shall provide 20 hours of sign language interpretation services during the year that the temporary certificate is valid. If the 20 hours are not obtained before the temporary certificate expires, the applicant shall apply for another temporary certificate.
- C.** Beginning January 1, 2005, the Council shall no longer issue temporary certificates of competency.

R9-26-505. Grandfathering Sign Language Interpreters

For up to 1 year after the effective date of these rules, the Council shall issue a sign language interpreter certificate of competency to an applicant who holds a CI and CT, CSC, CDI, or SC:L RID certification, who files an application with the Council, and submits the following:

1. The information required in R9-26-503(A)(1) and (2); and
2. Documentation that the applicant has provided at least 20 hours of sign language interpretation services in proceedings before January 1, 1997.

R9-26-506. Oral Interpreter Certification

- A.** The Council shall issue an oral interpreter certificate of competency to an applicant who files an application with the Council, and submits the following:
1. A certified copy of the applicant's RID OIC certification, or documentation indicating that the applicant has provided at least 500 hours of oral interpreter services within the 3 years immediately preceding the date the applicant filed the documentation with the Council;
 2. The information required in R9-26-503(A)(2)(b), (c), (d), (e), (f), and (g); and
 3. A statement on the applicant's affidavit that the applicant shall obtain RID OIC certification by January 1, 2005, if not already obtained, and shall complete the continuing education requirements necessary to maintain current RID certification.
- B.** After January 1, 2005, applicants for oral interpreter certificates of competency shall have an RID OIC certification to satisfy subsection (A)(1).

R9-26-507. Realtime Translator Certification

- A.** The Council shall issue a realtime translator certificate of competency to an applicant who files an application with the Council, and submits the following:
1. A certified copy of the applicant's Superior Court certification issued pursuant to A.R.S. § 12-222, and a notarized affidavit, signed by the applicant, attesting that the applicant has provided realtime translation in at least 2 trials in state or federal court; or
 2. A certified copy of the applicant's NCRA Registered Professional Reporter, Registered Merit Reporter, or Registered Diplomat Reporter certification, and a notarized affidavit, signed by the applicant, attesting that the appli-

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cant has provided realtime translation in at least 2 trials in state or federal court; or

3. A certified copy of the applicant's CRR, and a notarized affidavit, signed by the applicant, attesting that the applicant follows the NCRA Code of Professional Ethics, Section II: Realtime Reporter as Assistive Technology in Legal Proceeding, set forth in subsection (C); and
 4. A statement on the applicant's affidavit that the applicant shall obtain NCRA CRR certification by January 1, 2005, if not already obtained, and shall complete the continuing education requirements necessary to maintain current NCRA CRR certification.
- B. After January 1, 2005, NCRA CRR certification shall be the only certification that shall satisfy subsection (A).
- C. Realtime translators shall comply with the following NCRA Code of Professional Ethics, Section II: Realtime Reporter as Assistive Technology in Legal Proceeding requirements:
1. Explain, before beginning realtime reporting, who has hired the reporter, what is to be reported, and that the realtime is to be used as assistive technology, not as a verbatim record of the proceeding;
 2. Determine, before beginning realtime reporting, who owns the residual computer file;
 3. Keep all assistive, assignment-related information confidential;
 4. Render as near a verbatim translation as possible, conveying the content and spirit of the speaker, using substitute language that is computer-translatable for the deaf person to understand, and using parentheticals to describe to the deaf person all sounds during the proceeding;
 5. Maintain absolute neutrality in all proceedings, by not counseling, advising, or interjecting personal opinions;
 6. Accept assignments using discretion with regard to their skills, the setting, the deaf person being assisted, and accurately assessing the reporter's qualifications for realtime translation;
 7. Know how to operate the software and hardware being used, including being able to troubleshoot anticipated problems that occur with software and hardware;
 8. Further their knowledge and skills by participating in workshops, professional meetings, interaction with professional colleagues, reading current literature, and achieving additional state or national realtime certifications; and
 9. Save a hard copy or computer disk of the actual translation that the deaf person saw on screen. If the translation is saved on computer disk, it shall be in text, or American standard code for information interchange format.

R9-26-508. Application Processing Procedures; Issuance; Denial

- A. Within 10 business days of receiving an initial or renewal certificate of competency application, the Council shall notify the applicant, in writing, that the application package is complete or incomplete. If the package is incomplete, the notice shall specify what information is missing.
- B. An applicant with an incomplete package shall supply the missing information within 10 business days from the date of the notice. If the applicant fails to do so, the Council may close the file. An applicant whose file has been closed shall begin the application process anew.
- C. Upon receipt of all missing information within 10 business days, as specified in subsection (B), the Council shall notify the applicant, in writing, that the application is complete.
- D. The Council shall not process a certificate of competency application until the applicant has fully complied with the requirements of this Article.

- E. The Council shall notify an applicant, in writing, whether the certificate of competency is granted or denied, no later than 30 business days after receipt of a completed application package. The date of receipt is the postmark date of the notice advertising the applicant that the package is complete.
- F. The Council may deny a certificate of competency for any of the following reasons:
 1. Failure to provide complete documentation,
 2. Providing false or misleading information, or
 3. Failure to meet the requirements stated in this Article.
- G. The notice of denial shall include the following:
 1. Reasons for the denial, with citations to the statutes or rules on which the denial is based;
 2. The applicant's right to request reconsideration pursuant to subsection (I); and
 3. The name and telephone number of an agency contact person who can answer questions regarding the application process.
- H. The following time frames shall apply for initial and renewal certificate of competency applications:
 1. Administrative completeness review time frame: 10 business days.
 2. Substantive review time frame: 30 business days;
 3. Overall time frame: 40 business days.
- I. Within 15 business days of the mailing date of the Council's notice of denial, the applicant may submit a request for reconsideration to the Council, setting forth the facts that justify reconsideration of the denial. The Council shall review all documentation, and interview any person with information relevant to issuing or denying the applicant's certificate.
- J. Within 10 business days of receiving the applicant's request for reconsideration, the Council shall notify the applicant, in writing, whether the denial is upheld. If a denial is upheld, the Council's notice upholding the denial shall include the following:
 1. Reasons for the denial, with citations to the statutes or rules on which the denial is based;
 2. The applicant's right to appeal the denial, including the number of days in which the applicant has to file a request for hearing to challenge the denial, and the right to request an informal settlement conference pursuant to A.R.S. § 41-1092.06;
 3. The name and telephone number of an agency contact person who can answer questions regarding the appeal process.
- K. An applicant whose certificate denial is upheld has a right to a hearing, an opportunity for rehearing, and judicial review pursuant to A.R.S. §§ 41-1061 et seq., 41-1092 et seq., and 12-901 et seq.

R9-26-509. Certification Renewal

Certification of competency holders shall renew their certificates on or before January 1 of every year. If January 1 is a Saturday, Sunday, or legal holiday, the renewal deadline is the 1st business day following the Saturday, Sunday, or legal holiday. To renew certificates of competency, the certificate holder shall file all the following documentation with the Council:

1. A certified copy of the certificate holder's current RID, or NCRA, certification;
2. A notarized affidavit, signed by the certificate holder, attesting that since the Council issued the certificate, the certificate holder:
 - a. Has not been disciplined and is not currently the subject of any disciplinary action in any jurisdiction, and has not been disciplined and is not currently the subject of any disciplinary action before RID for sign language and oral interpreters, relating to pro-

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viding interpretation services of adhering to the RID Code of Ethics, set forth in R9-26-503(C), or before NCRA for realtime translators, relating to providing translation services or adhering to the NCRA Code of Professional Ethics, Section II: Realtime Reporter as Assistive Technology in Legal Proceeding, set forth in R9-26-507(C);

- b. Has not been named as a defendant in any law suit alleging that the certificate holder was negligent in providing interpretation services, or alleging the certificate holder violated the RID Code of Ethics, set forth in R9-26-503(C), or alleging the certificate holder was negligent in providing translation services, or alleging the certificate holder violated the NCRA Code of Professional Ethics, Section II: Realtime Reporter as Assistive Technology in Legal Proceeding, set forth in R9-26-507(C);
 - c. Follows the RID Code of Ethics, set forth in R9-26-503(C), or the NCRA Code of Professional Ethics, Section II: Realtime Reporter as Assistive Technology in Legal Proceeding, set forth in R9-26-507(C), as applicable;
 - d. Understands that it is the certificate holder's duty to ensure that the certificate holder's interpreting, or translating, skills meet the deaf person's communication needs, and that failure to do so may be grounds for revocation of the certificate holder's certificate of competency;
 - e. Has completed the requirements to maintain RID, or NCRA, certification since the effective date, or the last renewal date, whichever is more recent, of the certificate holder's certificate of competency, and understands that requirements necessary to maintain current RID, or NCRA, certification shall continue to be completed; and
 - f. Has completed at least 3 clock hours of continuing legal education since the effective date, or the last renewal date, whichever is more recent, of the certificate holder's certificate, has maintained accurate records of compliance with obtaining continuing legal education, and shall make these records available for examination upon the Council's request.
3. The certificate holder's current name, address, and telephone number.

R9-26-510. Certification Revocation

- A. The Council may revoke a certificate of competency for any of the following reasons:
 - 1. The certificate holder falsified any application or renewal information; and
 - 2. The certificate holder violated the RID Code of Ethics, set forth in R9-26-503(C), or the NCRA Code of Professional Ethics, Section II, set forth in R9-26-507(C).
- B. A complaint alleging any of the reasons for revocation shall be in writing, with the name, address, telephone number, and signature of the person filing the complaint. A complaint may be written by someone on behalf of the complainant, but also shall include the complainant's name, address, telephone number, and signature, indicating that the complaint is filed by the complainant. A complaint may be videotaped, with the complainant signing the complaint, but also shall include the complainant's name, address, and telephone number.
- C. Within 20 business days of receiving a complaint, the Council shall mail the complaint to the certificate holder, and request the certificate holder to respond.

- D. The certificate holder shall file a written response to the complaint with the Council, in writing, within 20 business days of the date that the complaint was mailed to the certificate holder.
- E. The Council shall investigate the complaint and either dismiss the complaint, or send the matter to a formal hearing, within 60 business days of receiving the complaint. If no grounds are found to support the complaint, the Council shall dismiss the complaint.
- F. If the complaint is sent to a formal hearing, the hearing shall be conducted pursuant to A.R.S. §§ 41-1061 et seq. and 41-1092 et seq. A party to the hearing has an opportunity for rehearing or review, and judicial review pursuant to A.R.S. §§ 41-1092 et seq. and 12-901 et seq.

R9-26-511. Rehearing or Review of Decisions

- A. If a party to an appealable agency action or contested case files a Motion for Rehearing or Review with the Council, it shall be filed not later than 30 calendar days after service of the decision, and shall specify the particular grounds for the motion. For purposes of this subsection, a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party's last known residence or place of business.
- B. A rehearing or review may be granted for any of the following causes materially affecting the moving party's rights:
 - 1. Irregularity in the administrative proceedings of the agency, the administrative law judge, or the prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;
 - 2. Misconduct of the Council, or the administrative law judge, or prevailing party;
 - 3. Accident or surprise which could not have been prevented by ordinary prudence;
 - 4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
 - 5. Excessive or insufficient penalties;
 - 6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing; or
 - 7. A decision which is not justified by the evidence or is contrary to law.
- C. Not later than 15 calendar days after the Council's receipt of a motion for rehearing or review, the Council may affirm or modify the decision or grant a rehearing or review to any of the parties on all or part of the issues for any of the reasons set forth in subsection (B). An order modifying a decision or granting a rehearing or review shall specify with particularity the ground or grounds on which the rehearing or review is granted, and the rehearing or review shall cover only those matters so specified.
- D. Not later than 15 calendar days after a decision is rendered, the Council may on its own initiative order a rehearing or review of its decision for any reason for which it might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Council may grant a rehearing or review for a reason not stated in a party's motion. In either case the order granting such a rehearing or review shall specify the grounds for the rehearing or review.
- E. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may within 10 calendar days after such service serve opposing affidavits, which period may be extended for an additional period not exceeding 20 calendar days by the Council for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.

NOTICE OF PROPOSED RULEMAKING

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND
ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 2. CORPORATION COMMISSION

FIXED UTILITIES

PREAMBLE

1. Sections Affected

	<u>Rulemaking Action</u>
Article 16	New Article
R14-2-1601	New Section
R14-2-1602	New Section
R14-2-1603	New Section
R14-2-1604	New Section
R14-2-1605	New Section
R14-2-1606	New Section
R14-2-1607	New Section
R14-2-1608	New Section
R14-2-1609	New Section
R14-2-1610	New Section
R14-2-1611	New Section
R14-2-1612	New Section
R14-2-1613	New Section
R14-2-1614	New Section
R14-2-1615	New Section
R14-2-1616	New Section

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 40-202, 40-203, 40-250, 40-321, 40-322, 40-331, 40-332, 40-336, 40-361, 40-365, 40-367, and under A.R.S. Title 40, generally.

Constitutional authority: Arizona Constitution, Article 15

Implementing statute: Not applicable

3. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Gary Yaquinto, Director
Utilities Division

Address: Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Telephone: (602) 542-4251

Fax: (602) 542-2129

Name: Bradford A. Borman, Attorney

Address: Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Telephone: (602) 542-3402

Fax: (602) 542-4870

4. An explanation of the rule, including the agency's reasons for initiating the rules:

The proposed rules establish the structure and process for the introduction of retail electric competition in the state of Arizona. The rules are designed to allow consumers to select the entity from whom to purchase various services, and to allow electric providers to reach customers who until now have never had the opportunity for such choice.

5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

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6. An explanation of the rule, including the agency's reasons for initiating the rule:

I. Identification of the proposed rulemaking:

The proposed rule (Article 16) provides procedures and schedules for introducing competition into the provision of electric service.

II. Brief summary of the economic, small business, and consumer impact statement:

Increased competition in the electric industry is expected to produce several benefits:

1. Consumer choice among energy suppliers.
2. Greater customization of energy services, especially for larger consumers, regarding time of use rates, interruptible service, contract duration, pricing arrangements, risk management, and so on.
3. Greater innovation in technology and greater applications of technological innovations, especially in distributed generation, as a result of incentives in the competitive marketplace.
4. Greater application of energy efficiency measures as energy service companies offer packages of electric energy, demand side management measures, and possibly other services such as building maintenance services.
5. Lower prices for electricity due to competitive pressures and to technological, marketing, and organizational innovations that would not occur as rapidly, if at all, in a regulated monopoly environment.

The costs of participating in a competitive market generally involve risk management and information. Examples of possible costs include: the costs of searching out and evaluating alternatives; additional recordkeeping and billing costs associated with deliveries of electricity from suppliers; additional costs of executing, monitoring, and enforcing contracts; and additional costs of maintaining power quality and transmission and generation system reliability.

A competitive market in electricity will benefit small businesses because it increases their choices and tends to lower prices of electric service. However, small businesses must be informed about their choices. The rule indicates that the Commission may undertake educational activities to lower the costs of participating in the competitive market.

Probable costs to the Commission include costs associated with new tasks, such as reviewing applications for competitive Certificates of Convenience and Necessity, and engaging in evidentiary hearings for stranded investment and unbundled tariff filings. However, Commission review of tariff filings should be reduced eventually and costly rate cases will be avoided for competitive services.

Employment opportunities could be enhanced as new energy-related companies move into the area or as a result of new business start-ups. However, employees at public utilities could lose their positions through cost cutting measures as utilities strive to become more cost competitive.

Implementation of the proposed rule should result in no increased costs to political subdivisions. As an end user of competitive electricity services, a political subdivision may benefit from greater choices of service options and affordable rates. Those political subdivisions which have their own municipal electric utilities may feel pressure to allow competitive electric services.

The restructuring policy proposed is preferred to alternatives considered because it minimizes administrative complexity; requires minimal information and planning needs a priori; is relatively flexible so that policy could be adjusted in mid-course; uses existing institutions; minimizes utility organizational disruption; allows buyers and sellers to enter the market freely; limits market power of incumbent utilities; and minimizes public confusion.

7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Kim E. Clark
Economist III

Address: Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Telephone: (602) 542-0824

Fax: (602) 542-2129

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8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: December 2, 1996
Time: 10 a.m.
Location: The Hearing Room of the Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona
Nature: Oral proceedings

Date: December 3, 1996
Time: 10:30 a.m.
Location: Commission Hearing Room
400 West Congress Street, Room 222
Tucson, Arizona
Nature: Oral proceedings

Date: December 3, 1996
Time: 3:30 p.m.
Location: City Council Chambers
180 West 1st Street
Yuma, Arizona
Nature: Oral proceedings

Date: December 4, 1996
Time: 2 p.m.
Location: Coconino County Board of Supervisors Meeting Room
219 East Cherry
Flagstaff, Arizona
Nature: Oral proceedings

Date: December 4, 1996
Time: 7 p.m.
Location: City Council Chambers
Kingman City Hall
310 North 4th Street
Kingman, Arizona
Nature: Oral proceedings

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.

10. Incorporations by reference and their location in the rules:

Federal Energy Regulatory Commission Order 888 (III FERC Stats. & Regs. ¶ 31, 036, 1996). This order is incorporated by reference in R14-2-1606(C)(5).

11. The full text of the rules follows:

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TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND
ASSOCIATIONS; SECURITIES REGULATIONS

CHAPTER 2. CORPORATION COMMISSION
FIXED UTILITIES

ARTICLE 16. RETAIL ELECTRIC COMPETITION

Section

- R14-2-1601. Definitions
- R14-2-1602. Filing of Tariffs by Affected Utilities
- R14-2-1603. Certificates of Convenience and Necessity
- R14-2-1604. Competitive Phases
- R14-2-1605. Competitive Services
- R14-2-1606. Services Required to be Made Available by Affected Utilities
- R14-2-1607. Recovery of Stranded Cost of Affected Utilities
- R14-2-1608. System Benefits Charges
- R14-2-1609. Solar Portfolio Standard
- R14-2-1610. Spot Markets and Independent System Operation
- R14-2-1611. In-state Reciprocity
- R14-2-1612. Rates
- R14-2-1613. Service Quality, Consumer Protection, Safety, and Billing Requirements
- R14-2-1614. Reporting Requirements
- R14-2-1615. Administrative Requirements
- R14-2-1616. Legal Issues

ARTICLE 16. RETAIL ELECTRIC COMPETITION

R14-2-1601. Definitions

In this Article, unless the context otherwise requires:

1. "Affected Utilities" means the following public service corporations providing electric service:
 - a. Tucson Electric Power Company, Arizona Public Service Company, Citizens Utilities Company, Arizona Electric Power Cooperative, Trico Electric Cooperative, Duncan Valley Electric Cooperative, Graham County Electric Cooperative, Mohave Electric Cooperative, Sulphur Springs Valley Electric Cooperative, Navopache Electric Cooperative, Ajo Improvement Company, and Morenci Water and Electric Company.
 - b. In the event that modifications are made to existing law that would allow the application of this Article to the Salt River Project Agricultural Improvement and Power District ("SRP"), then Affected Utilities shall also include SRP.
2. "Bundled Service" means electric service provided as a package to the consumer including all generation, transmission, distribution, ancillary, and other services necessary to deliver and measure useful electric energy and power to consumers.
3. "Buy-through" refers to a purchase of electricity by an Affected Utility at wholesale for a particular retail consumer or aggregate of consumers or at the direction of a particular retail consumer or aggregate of consumers.
4. "Distribution Service" means the delivery of electricity to a retail consumer through wires, transformers, and other devices that are not classified as transmission services subject to the jurisdiction of the Federal Energy Regulatory Commission; Distribution Service excludes meters and meter reading.
5. "Electric Service Provider" means a company supplying, marketing, or brokering at retail any of the services described in R14-2-1605 or R14-2-1606.
6. "Eligible Demand" means the total consumer kilowatts of demand which an Affected Utility must make available to competitive generation under the terms of this Article or the consumer kilowatts of demand provided competitively in an Affected Utility's distribution territory, whichever is greater.
7. "Standard Offer" means Bundled Service offered to all consumers in a designated area at regulated rates.
8. "Stranded Cost" means the verifiable net difference between:
 - a. The value of all the prudent jurisdictional assets and obligations necessary to furnish electricity (such as generating plants, purchased power contracts, fuel contracts, and regulatory assets), acquired or entered into prior to the adoption of this Article, under traditional regulation of Affected Utilities; and
 - b. The market value of those assets and obligations directly attributable to the introduction of competition under this Article.
9. "System Benefits" means Commission-approved utility low income, demand side management, environmental, renewables, and nuclear power plant decommissioning programs.
10. "Unbundled Service" means electric service elements provided and priced separately, including, but not limited to, such service elements as generation, transmission, distribution, and ancillary services. Unbundled Service may be sold to consumers or to other Electric Service Providers.

R14-2-1602. Filing of Tariffs by Affected Utilities

Each Affected Utility shall file tariffs consistent with this Article by December 31, 1997.

R14-2-1603. Certificates of Convenience and Necessity

- A. Any Electric Service Provider intending to supply services described in R14-2-1605 or R-14-2-1606, other than services subject to federal jurisdiction, shall obtain a Certificate of Convenience and Necessity from the Commission pursuant to this Article; however, a Certificate is not required to offer information services or billing and collection services. An Affected Utility does not need to apply for a Certificate of Convenience and Necessity for any service provided as of the date of adoption of this Article within its distribution service territory.
- B. Any company desiring such a Certificate of Convenience and Necessity shall file with the Docket Control Center the required number of copies of an application. Such Certificates shall be restricted to geographical areas served by the Affected Utilities as of the date this Article is adopted and to service areas added under the provisions of R14-2-1611(B). In support of the request for a Certificate of Convenience and Necessity, the following information must be provided:
 1. A description of the electric services which the applicant intends to offer;
 2. The proper name and correct address of the applicant, and
 - a. The full name of the owner if a sole proprietorship,

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- b. The full name of each partner if a partnership.
 - c. A full list of officers and directors if a corporation, or
 - d. A full list of the members if a limited liability corporation;
 - 3. A tariff for each service to be provided that states the maximum rate and terms and conditions that will apply to the provision of the service;
 - 4. A description of the applicant's technical ability to obtain and deliver electricity and provide any other proposed services;
 - 5. Documentation of the financial capability of the applicant to provide the proposed services, including the most recent income statement and balance sheet, the most recent projected income statement, and other pertinent financial information. Audited information shall be provided if available;
 - 6. A description of the form of ownership (for example, partnership, corporation);
 - 7. Such other information as the Commission or the staff may request.
 - C. At the time of filing for a Certificate of Convenience and Necessity, each applicant shall notify the Affected Utilities in whose service territories it wishes to offer service of the application by serving a complete copy of the application on the Affected Utilities.
 - D. The Commission may deny certification to any applicant who:
 - 1. Does not provide the information required by this Article;
 - 2. Does not possess adequate technical or financial capabilities to provide the proposed services;
 - 3. Fails to provide a performance bond, if required.
 - E. Every Electric Service Provider obtaining a Certificate of Convenience and Necessity under this Article shall obtain certification subject to the following conditions:
 - 1. The Electric Service Provider shall comply with all Commission rules, orders, and other requirements relevant to the provision of electric service and relevant to resource planning;
 - 2. The Electric Service Provider shall maintain accounts and records as required by the Commission;
 - 3. The Electric Service Provider shall file with the Director of the Utilities Division all financial and other reports that the Commission may require and in a form and at such times as the Commission may designate;
 - 4. The Electric Service Provider shall maintain on file with the Commission all current tariffs and any service standards that the Commission shall require;
 - 5. The Electric Service Provider shall cooperate with any Commission investigation of customer complaints;
 - 6. The Electric Service Provider shall obtain all necessary permits and licenses;
 - 7. Failure to comply with any of the above conditions may result in rescission of the Electric Service Provider's Certificate of Convenience and Necessity.
 - E. In appropriate circumstances, the Commission may require, as a precondition to certification, the procurement of a performance bond sufficient to cover any advances or deposits the applicant may collect from its customers, or order that such advances or deposits be held in escrow or trust.
- R14-2-1604. Competitive Phases**
- A. Each Affected Utility shall make available at least 20% of its 1995 system retail peak demand for competitive generation supply to all customer classes (including residential and small commercial consumers) not later than January 1, 1999. If data permit, coincident annual peak demand shall be used; otherwise noncoincident peak data may be used.
 - 1. No more than 1/2 of the Eligible Demand may be procured by consumers, each of whose total competitive contract demand is greater than 3 MW.
 - 2. At least 15% of the Eligible Demand shall be reserved for residential consumers.
 - 3. Aggregation of loads of multiple consumers shall be permitted.
 - B. Each Affected Utility shall make available at least 50% of its 1995 system retail peak demand for competitive generation supply to all customer classes (including residential and small commercial consumers) not later than January 1, 2001. If data permit, coincident peak annual demand shall be used; otherwise noncoincident peak data may be used.
 - 1. No more than 1/2 of the Eligible Demand may be procured by consumers, each of whose total competitive contract demand is greater than 3 MW.
 - 2. At least 30% of the Eligible Demand shall be reserved for residential consumers.
 - 3. Aggregation of loads of multiple consumers shall be permitted.
 - C. Prior to 2001, no single consumer shall receive more than 20% of the Eligible Demand in a given year in an Affected Utility's service territory.
 - D. Each Affected Utility shall make available all of its retail demand for competitive generation supply not later than January 1, 2003.
 - E. By the date indicated in R14-2-1602, Affected Utilities shall propose for Commission review and approval how customers will be selected for participation in the competitive market prior to 2003.
 - 1. Possible selection methods are 1st-come, 1st-served; random selection via a lottery among volunteering consumers; or designation of geographic areas.
 - 2. The method for selecting customers to participate in the competitive market must fairly allow participation by a wide variety of customers of all sizes of loads.
 - 3. All customers who produce or purchase at least 10% of their annual electricity consumption from photovoltaic or solar thermal resources installed in Arizona after January 1, 1997 shall be selected for participation in the competitive market if those customers apply for participation in the competitive market. Such participants count toward the minimum requirements in subsections (A) and (B).
 - 4. The Commission Staff shall commence a series of workshops on selection issues within 45 days of the adoption of this Article and Staff shall submit a report to the Commission discussing the activities and recommendations of participants in the workshops. The report shall be due not later than 90 days prior to the date indicated in R14-2-1602.
 - F. Retail consumers served under existing contracts are eligible to participate in the competitive market prior to expiration of the existing contract only if the Affected Utility and the consumer agree that the retail consumer may participate in the competitive market.
 - G. An Affected Utility may engage in Buy-throughs with individual or aggregated consumers. Any contract for a Buy-through effective prior to the date indicated in subsection (A) must be approved by the Commission.
 - H. Schedule Modifications for Cooperatives
 - 1. An electric cooperative may request that the Commission modify the schedule described in subsections (A) through (D) so as to preserve the tax exempt status of the cooperative or to allow time to modify contractual arrangements pertaining to delivery of power supplies and associated loans.

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2. As part of the request, the cooperative shall propose methods to enhance consumer choice among generation resources.
3. The Commission shall consider whether the benefits of modifying the schedule exceed the costs of modifying the schedule.

R14-2-1605. Competitive Services

A properly certificated Electric Service Provider may offer any of the following services under bilateral or multilateral contracts with retail consumers:

1. Generation of electricity from generators at any location whether owned by the Electric Service Provider or purchased from another generator or wholesaler of electric generation.
2. Any service described in R14-2-1606, except Distribution Service and except services required by the Federal Energy Regulatory Commission to be monopoly services. Billing and collection services, and information services do not require a Certificate of Convenience and Necessity.

R14-2-1606. Services Required to be Made Available by Affected Utilities

- A.** Until the Commission determines that competition has been substantially implemented for a particular class of consumers (residential, commercial, industrial) so that all consumers in that class have an opportunity to participate in the competitive market, and until all Stranded Costs pertaining to that class of customers have been recovered, each Affected Utility shall make available to all consumers in that class in its service area, as defined on the date indicated in R14-2-1602, Standard Offer bundled generation, transmission, ancillary, distribution, and other necessary services at regulated rates.
1. An Affected Utility may request that the Commission determine that competition has been substantially implemented to allow discontinuation of Standard Offer service and shall provide sufficient documentation to support its request.
 2. The Commission may, on its own motion, investigate whether competition has been substantially implemented and whether Standard Offer service may be discontinued.
- B. Standard Offer Tariffs**
1. By the date indicated in R14-2-1602, each Affected Utility may file proposed tariffs to provide Standard Offer Bundled Service and such rates shall not become effective until approved by the Commission. If no such tariffs are filed, rates and services in existence as of the date in R14-2-1602 shall constitute the Standard Offer.
 2. Affected Utilities may file proposed revisions to such rates. It is the expectation of the Commission that the rates for Standard Offer service will not increase, relative to existing rates, as a result of allowing competition. Any rate increase proposed by an Affected Utility for Standard Offer service must be fully justified through a rate case proceeding.
 3. Such rates shall reflect the costs of providing the service.
 4. Consumers receiving Standard Offer service are eligible for potential future rate reductions authorized by the Commission, such as reductions authorized in Decision No. 59601.
- C.** By the date indicated in R14-2-1602, each Affected Utility shall file Unbundled Service tariffs to provide the services listed below to all eligible purchasers on a nondiscriminatory basis:
1. Distribution Service;
 2. Metering and meter reading services;

3. Billing and collection services;
 4. Open access transmission service (as approved by the Federal Energy Regulatory Commission, if applicable);
 5. Ancillary services in accordance with Federal Energy Regulatory Commission Order 888 (III FERC Stats. & Regs. ¶ 31,036, 1996) incorporated by reference;
 6. Information services such as provision of customer information to other Electric Service Providers;
 7. Other ancillary services necessary for safe and reliable system operation.
- D.** To manage its risks, an Affected Utility may include in its tariffs deposit requirements and advance payment requirements for Unbundled Services.
- E.** The Affected Utilities must provide transmission and ancillary services according to the following guidelines:
1. Services must be provided consistent with applicable tariffs filed with the Federal Energy Regulatory Commission.
 2. Unless otherwise required by federal regulation, Affected Utilities must accept power and energy delivered to their transmission systems by others and offer transmission and related services comparable to services they provide to themselves.
- F. Customer Data**
1. Upon authorization by the customer, an Electric Service Provider shall release in a timely and useful manner that customer's demand and energy data for the most recent 12-month period to a customer-specified Electric Service Provider.
 2. The Electric Service Provider requesting such customer data shall provide an accurate account number for the customer.
 3. The form of data shall be mutually agreed upon by the parties and such data shall not be unreasonably withheld.
- G. Rates for Unbundled Services**
1. The Commission shall review and approve rates for services listed in subsection (C) and requirements listed in subsection (D), where it has jurisdiction, before such services can be offered.
 2. Such rates shall reflect the costs of providing the services.
 3. Such rates may be downwardly flexible if approved by the Commission.
- H.** Electric Service Providers offering services under this Section shall provide adequate supporting documentation for their proposed rates. Where rates are approved by another jurisdiction, such as the Federal Energy Regulatory Commission, those rates shall be provided to this Commission.
- I.** Within 90 days of the adoption of this Article, the Commission Staff shall commence a series of workshops to explore issues in the provision of Unbundled Service and Standard Offer service.
1. Parties to be invited to participate in the workshops shall include utilities, consumers, organizations promoting energy efficiency, and other Electric Service Providers.
 2. Among the issues to be reviewed in the workshops are: metering requirements; metering protocols; designation of appropriate test years; the nature of adjustments to test year data; de-averaging of rates; service characteristics such as voltage levels; revenue uncertainty; line extension policies; and the need for performance bonds.
 3. A report shall be submitted to the Commission by the Staff on the activities and recommendations of the participants in the workshops not later than 60 days prior to the date indicated in R14-2-1602. The Commission shall consider any recommendations regarding Unbundled Service and Standard Offer service tariffs.

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R14-2-1607. Recovery of Stranded Cost of Affected Utilities

- A. The Affected Utilities shall take every feasible, cost-effective measure to mitigate or offset Stranded Cost by means such as expanding wholesale or retail markets, or offering a wider scope of services for profit, among others.
- B. The Commission shall allow recovery of unmitigated Stranded Cost by Affected Utilities.
- C. A working group to develop recommendations for the analysis and recovery of Stranded Cost shall be established.
 - 1. The working group shall commence activities within 15 days of the date of adoption of this Article.
 - 2. Members of the working group shall include representatives of Staff, the Residential Utility Consumer Office, consumers, utilities, and other Electric Service Providers. In addition, the Executive and Legislative Branches shall be invited to send representatives to be members of the working group.
 - 3. The working group shall be coordinated by the Director of the Utilities Division of the Commission or by his or her designee.
- D. In developing its recommendations, the working group shall consider at least the following factors:
 - 1. The impact of Stranded Cost recovery on the effectiveness of competition;
 - 2. The impact of Stranded Cost recovery on customers of the Affected Utility who do not participate in the competitive market;
 - 3. The impact, if any, on the Affected Utility's ability to meet debt obligations;
 - 4. The impact of Stranded Cost recovery on prices paid by consumers who participate in the competitive market;
 - 5. The degree to which the Affected Utility has mitigated or offset Stranded Cost;
 - 6. The degree to which some assets have values in excess of their book values;
 - 7. Appropriate treatment of negative Stranded Cost;
 - 8. The time period over which such Stranded Cost charges may be recovered. The Commission shall limit the application of such charges to a specified time period;
 - 9. The ease of determining the amount of Stranded Cost;
 - 10. The applicability of Stranded Cost to interruptible customers;
 - 11. The amount of electricity generated by renewable generating resources owned by the Affected Utility.
- E. The working group shall submit to the Commission a report on the activities and recommendations of the working group no later than 90 days prior to the date indicated in R14-2-1602.
- F. The Commission shall consider the recommendations and decide what actions, if any, to take based on the recommendations.
- G. The Affected Utilities shall file estimates of unmitigated Stranded Cost. Such estimates shall be fully supported by analyses and by records of market transactions undertaken by willing buyers and willing sellers.
- H. An Affected Utility shall request Commission approval of distribution charges or other means of recovering unmitigated Stranded Cost from customers who reduce or terminate service from the Affected Utility as a direct result of competition governed by this Article, or who obtain lower rates from the Affected Utility as a direct result of the competition governed by this Article.
- I. The Commission shall, after hearing and consideration of analyses and recommendations presented by the Affected Utilities, Staff, and intervenors, determine for each Affected Utility the magnitude of Stranded Cost, and appropriate Stranded Cost recovery mechanisms and charges. In making its determi-

nation of mechanisms and charges, the Commission shall consider at least the following factors:

- 1. The impact of Stranded Cost recovery on the effectiveness of competition;
 - 2. The impact of Stranded Cost recovery on customers of the Affected Utility who do not participate in the competitive market;
 - 3. The impact, if any, on the Affected Utility's ability to meet debt obligations;
 - 4. The impact of Stranded Cost recovery on prices paid by consumers who participate in the competitive market;
 - 5. The degree to which the Affected Utility has mitigated or offset Stranded Cost;
 - 6. The degree to which some assets have values in excess of their book values;
 - 7. Appropriate treatment of negative Stranded Cost;
 - 8. The time period over which such Stranded Cost charges may be recovered. The Commission shall limit the application of such charges to a specified time period;
 - 9. The ease of determining the amount of Stranded Cost;
 - 10. The applicability of Stranded Cost to interruptible customers;
 - 11. The amount of electricity generated by renewable generating resources owned by the Affected Utility.
- J. Stranded Cost may only be recovered from customer purchases made in the competitive market using the provisions of this Article. Any reduction in electricity purchases from an Affected Utility resulting from self-generation, demand side management, or other demand reduction attributable to any cause other than the retail access provisions of this Article shall not be used to calculate or recover any Stranded Cost from a consumer.
 - K. The Commission may order an Affected Utility to file estimates of Stranded Cost and mechanisms to recover or, if negative, to refund Stranded Cost.
 - L. The Commission may order regular revisions to estimates of the magnitude of Stranded Cost.

R14-2-1608. System Benefits Charges

- A. By the date indicated in R14-2-1602, each Affected Utility shall file for Commission review non-bypassable rates or related mechanisms to recover the applicable pro-rata costs of System Benefits from all consumers located in the Affected Utility's service area who participate in the competitive market. In addition, the Affected Utility may file for a change in the System Benefits charge at any time. The amount collected annually through the System Benefits charge shall be sufficient to fund the Affected Utilities' present Commission-approved low income, demand side management, environmental, renewables, and nuclear power plant decommissioning programs.
- B. Each Affected Utility shall provide adequate supporting documentation for its proposed rates for System Benefits.
- C. An Affected Utility shall recover the costs of System Benefits only upon hearing and approval by the Commission of the recovery charge and mechanism. The Commission may combine its review of System Benefits charges with its review of filings pursuant to R14-2-1606.
- D. Methods of calculating System Benefits charges shall be included in the workshops described in R14-2-1606(I).

R14-2-1609. Solar Portfolio Standard

- A. Starting on January 1, 1999, any Electric Service Provider selling electricity under the provisions of this Article must derive at least 1/2 of 1% of the total retail energy sold competitively from new solar resources, whether that solar energy is purchased or generated by the seller. Solar resources include pho-

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photovoltaic resources and solar thermal resources that generate electricity. New solar resources are those installed on or after January 1, 1997.

B. Solar portfolio standard after December 31, 2001:

1. Starting on January 1, 2002, any Electric Service Provider selling electricity under the provisions of this Article must derive at least 1% of the total retail energy sold competitively from new solar resources, whether that solar energy is purchased or generated by the seller. Solar resources include photovoltaic resources and solar thermal resources that generate electricity. New solar resources are those installed on or after January 1, 1997.
2. The Commission may change the solar portfolio percentage applicable after December 31, 2001, taking into account, among other factors, the costs of producing solar electricity and the costs of fossil fuel for conventional power plants.

C. Any Electric Service Provider certificated under the provisions of this Article shall be able to credit 2 times the electric energy it generated, or caused to be generated under contract, before January 1, 1999, using photovoltaics or solar thermal resources installed on or after January 1, 1997, in Arizona to the electric energy requirements of subsection (A) or (B).

D. Electric Service Providers selling electricity under the provisions of this Article shall provide reports on sales and solar power as required in this Article, clearly demonstrating the output of solar resources, the installation date of solar resources, and the transmission of energy from those solar resources to Arizona consumers. The Commission may conduct necessary monitoring to ensure the accuracy of these data.

E. If an Electric Service Provider selling electricity under the provisions of this Article fails to meet the requirement in subsection (A) or (B) in any year, the Commission may impose a penalty on that Electric Service Provider up to 30¢ per kWh for deficiencies in the provision of solar energy. In addition, if the provision of solar energy is consistently deficient, the Commission may void an Electric Service Provider's contracts negotiated under this Article.

F. Photovoltaic or solar thermal resources that are located on the consumer's premises shall count toward the solar portfolio standard applicable to the current Electric Service Provider serving that consumer.

G. The solar portfolio standard described in this Section is in addition to renewable resource goals for Affected Utilities established in Decision No. 58643.

R14-2-1610. Spot Markets and Independent System Operation

A. The Commission shall conduct an inquiry into spot market development and independent system operation for the transmission system.

B. The Commission may support development of a spot market or independent system operator(s) for the transmission system.

C. The Commission may work with other entities to help establish spot markets and independent system operators.

R14-2-1611. In-state Reciprocity

A. The service territories of Arizona electric utilities which are not Affected Utilities shall not be open to competition under the provisions of this Article, nor shall Arizona electric utilities which are not Affected Utilities be able to compete for sales in the service territories of the Affected Utilities.

B. An Arizona electric utility, subject to the jurisdiction of the Commission, which is not an Affected Utility may voluntarily participate under the provisions of this Article if it makes its service territory available for competing sellers, if it agrees to

all of the requirements of this Article, and if it obtains an appropriate Certificate of Convenience and Necessity.

C. The Commission shall pursue, on its own or in cooperation with the Joint Legislative Study Committee on Electric Industry Competition established by House Bill 2504 (1996), legislation to address the role of electric utilities of Arizona political subdivisions or municipal corporations in a competitive market. The Commission shall further make available, as appropriate, staff assistance to the legislature if the legislature requests such assistance for the purpose of determining the proper role of electric utilities of Arizona political subdivisions or municipal corporations in a competitive market.

D. An Arizona electric utility, not subject to the jurisdiction of the Commission, which is not an Affected Utility, may voluntarily participate under the provisions of this Article if it makes its service territory available for competing sellers, if it agrees to all of the requirements of this Article other than any requirement to obtain a Certificate of Convenience and Necessity, if adequate enforcement mechanisms can be established, and if all other Affected Utilities consent in writing.

R14-2-1612. Rates

A. Market determined rates for competitively provided services as defined in R14-2-1605 shall be deemed to be just and reasonable.

B. Each Electric Service Provider selling services under this Article shall have on file with the Commission tariffs describing such services and maximum rates for those services, but the services may not be provided until the Commission has approved the tariffs.

C. Prior to the date indicated in R14-2-1604(D), competitively negotiated contracts governed by this Article customized to individual customers which comply with approved tariffs do not require further Commission approval. However, all such contracts whose term is 1 year or more and for service of 1 MW or more must be filed with the Director of the Utilities Division as soon as practicable. If a contract does not comply with the provisions of this Article it shall not become effective without a Commission order.

D. Contracts entered into on or after the date indicated in R14-2-1604(D) which comply with approved tariffs need not be filed with the Director of the Utilities Division. If a contract does not comply with the provisions of this Article it shall not become effective without a Commission order.

E. An Electric Service Provider holding a Certificate pursuant to this Article may price its competitive services, as defined in R14-2-1605, at or below the maximum rates specified in its filed tariff, provided that the price is not less than the marginal cost of providing the service.

F. Requests for changes in maximum rates or changes in terms and conditions of previously approved tariffs may be filed. Such changes become effective only upon Commission approval.

R14-2-1613. Service Quality, Consumer Protection, Safety, and Billing Requirements

A. Except as indicated elsewhere in this Article, R14-2-201 through R14-2-212, inclusive, are adopted in this Article by reference. However, where the term "utility" is used in R14-2-201 through R14-2-212, the term "utility" shall pertain to Electric Service Providers providing the services described in each paragraph of R14-2-201 through R14-2-212. R14-2-212(G)(2) shall pertain only to Affected Utilities. R14-2-212(G)(4) shall apply only to Affected Utilities. R14-2-212(H) shall pertain only to Electric Service Providers who provide distribution service.

B. The following shall not apply to this Article:

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1. R14-2-202 in its entirety.
 2. R14-2-212(F)(1).
 3. R14-2-213.
- C. No consumer shall be deemed to have changed suppliers of any service authorized in this Article (including changes from supply by the Affected Utility to another supplier) without written authorization by the consumer for service from the new supplier. If a consumer is switched to a different ("new") supplier without such written authorization, the new supplier shall cause service by the previous supplier to be resumed and the new supplier shall bear all costs associated with switching the consumer back to the previous supplier.
- D. Each Electric Service Provider providing service governed by this Article shall be responsible for meeting applicable reliability standards and shall work cooperatively with other companies with whom it has interconnections, directly or indirectly, to ensure safe, reliable electric service.
- E. Each Electric Service Provider shall provide at least 30 days notice to all of its affected consumers if it is no longer obtaining generation, transmission, distribution, or ancillary services necessitating that the consumer obtain service from another supplier of generation, transmission, distribution, or ancillary services.
- F. All Electric Service Providers rendering service under this Article shall submit accident reports as required in R14-2-101.
- G. An Electric Service Provider providing firm electric service governed by this Article shall make reasonable efforts to reestablish service within the shortest possible time when service interruptions occur and shall work cooperatively with other companies to ensure timely restoration of service where facilities are not under the control of the Electric Service Provider.
- H. Each Electric Service Provider shall ensure that bills rendered on its behalf include the toll free telephone numbers for billing, service, and safety inquiries and the telephone number of the Consumer Services Section of the Corporation Commission Utilities Division. Each Electric Service Provider shall ensure that billing and collection services rendered on its behalf comply with subsections (A) and (B).
- I. Additional Provisions for Metering and Meter Reading Services
1. An Electric Service Provider who provides metering or meter reading services pertaining to a particular consumer shall provide access to meter readings to other Electric Service Providers serving that same consumer.
 2. A consumer or an Electric Service Provider relying on metering information provided by another Electric Service Provider may request a meter test according to the tariff on file and approved by the Commission. However, if the meter is found to be in error by more than 3%, no meter testing fee will be charged.
 3. Protocols for metering shall be developed subsequent to the workshops described in R14-2-1606(I).
- J. Working Group on System Reliability and Safety
1. If it has not already done so, the Commission shall establish, by separate order, a working group to monitor and review system reliability and safety.
 - a. The working group may establish technical advisory panels to assist it.
 - b. The working group shall commence activities within 15 days of the date of adoption of this Article.
 - c. Members of the working group shall include representatives of Staff, consumers, the Residential Utility Consumer Office, utilities, other Electric Service Providers and organizations promoting energy efficiency. In addition, the Executive and Legislative

Branches shall be invited to send representatives to be members of the working group.

- d. The working group shall be coordinated by the Director of the Utilities Division of the Commission or by his or her designee.
 2. All Electric Service Providers governed by this Article shall cooperate and participate in any investigation conducted by the working group, including provision of data reasonably related to system reliability or safety.
 3. The working group shall report to the Commission on system reliability and safety regularly, and shall make recommendations to the Commission regarding improvements to reliability or safety.
- K. Electric Service Providers shall comply with applicable reliability standards and practices established by the Western Systems Coordinating Council and the North American Electric Reliability Council or successor organizations.
- L. Electric Service Providers shall provide notification and informational materials to consumers about competition and consumer choices, such as a standardized description of services, as ordered by the Commission.

R14-2-1614. Reporting Requirements

- A. Reports covering the following items shall be submitted to the Director of the Utilities Division by Affected Utilities and all Electric Service Providers granted a Certificate of Convenience and Necessity pursuant to this Article. These reports shall include the following information pertaining to competitive service offerings, Unbundled Services, and Standard Offer services in Arizona:
1. Type of services offered;
 2. kW and kWh sales to consumers, disaggregated by customer class (for example, residential, commercial, industrial);
 3. Solar energy sales (kWh) and sources for grid connected solar resources; kW capacity for off-grid solar resources;
 4. Revenues from sales by customer class (for example, residential, commercial, industrial);
 5. Number of retail customers disaggregated as follows: aggregators, residential, commercial under 100 kW, commercial 100 kW to 2999 kW, commercial 3000 kW or more, industrial less than 3000 kW, industrial 3000 kW or more, agricultural (if not included in commercial), and other;
 6. Retail kWh sales and revenues disaggregated by term of the contract (less than 1 year, 1 to 4 years, longer than 4 years), and by type of service (for example, firm, interruptible, other);
 7. Amount of and revenues from each service provided under R14-2-1605, and, if applicable, R14-2-1606;
 8. Value of all Arizona specific assets and accumulated depreciation;
 9. Tabulation of Arizona electric generation plants owned by the Electric Service Provider broken down by generation technology, fuel type, and generation capacity;
 10. Other data requested by Staff or the Commission;
 11. In addition, prior to the date indicated in R14-2-1604(D), Affected Utilities shall provide data demonstrating compliance with the requirements of R14-2-1604.
- B. Reporting Schedule
1. For the period through December 31, 2003, semi-annual reports shall be due on April 15 (covering the previous period of July through December) and October 15 (covering the previous period of January through June). The 1st such report shall cover the period January 1 through June 30, 1999.

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2. For the period after December 31, 2003, annual reports shall be due on April 15 (covering the previous period of January through December). The 1st such report shall cover the period January 1 through December 31, 2004.
- C. The information listed above may be provided on a confidential basis. However, staff or the Commission may issue reports with aggregate statistics based on confidential information that do not disclose data pertaining to a particular seller or purchases by a particular buyer.
- D. Any Electric Service Provider governed by this Article which fails to file the above data in a timely manner may be subject to a penalty imposed by the Commission or may have its Certificate rescinded by the Commission.
- E. Any Electric Service Provider holding a Certificate pursuant to this Article shall report to the Director of the Utilities Division the discontinuation of any competitive tariff as soon as practicable after the decision to discontinue offering service is made.
- F. In addition to the above reporting requirements, Electric Service Providers governed by this Article shall participate in Commission workshops or other forums whose purpose is to evaluate competition or assess market issues.
- G. Reports filed under the provisions of this Section shall be submitted in written format and in electronic format. Electric Service Providers shall coordinate with the Commission Staff on formats.

R14-2-1615. Administrative Requirements

- A. Any Electric Service Provider certificated under this Article may propose additional electric services at any time by filing a proposed tariff with the Commission describing the service, maximum rates, terms and conditions. The proposed new electrical service may not be provided until the Commission has approved the tariff.
- B. Contracts filed pursuant to this Article shall not be open to public inspection or made public except on order of the Com-

mission, or by the Commission or a Commissioner in the course of a hearing or proceeding.

- C. The Commission may consider variations or exemptions from the terms or requirements of any of the rules in this Article upon the application of an affected party. The application must set forth the reasons why the public interest will be served by the variation or exemption from the Commission rules and regulations. Any variation or exemption granted shall require an order of the Commission. Where a conflict exists between these rules and an approved tariff or order of the Commission, the provisions of the approved tariff or order of the Commission shall apply.
- D. The Commission may develop procedures for resolving disputes regarding implementation of retail electric competition.

R14-2-1616. Legal Issues

- A. A working group to identify, analyze, and provide recommendations to the Commission on legal issues relevant to this Article shall be established.
 1. The working group shall commence activities within 15 days of the date of adoption of this Article.
 2. Members of the working group shall include representatives of Staff, the Residential Utility Consumer Office, consumers, utilities, and other Electric Service Providers. In addition, the Executive and Legislative Branches and the Attorney General shall be invited to send representatives to be members of the working group.
 3. The working group shall be coordinated by the Director of the Legal Division of the Commission or by his or her designee.
- B. The working group shall submit to the Commission a report on the activities and recommendations of the working group no later than 90 days prior to the date indicated in R14-2-1602.
- C. The Commission shall consider the recommendations and decide what actions, if any, to take based on the recommendations.